UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1394
9 February 2001

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1394th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 22 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Tenth, eleventh and twelfth periodic reports of Australia (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.00-41169 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Tenth, eleventh and twelfth periodic reports of Australia (CERD/C/335/Add.2; HRI/CORE/1/Add.44) (continued)

1. At the invitation of the Chairman, the members of the Australian delegation took their places at the Committee table.

2. The CHAIRMAN invited Committee members to ask questions.

3. Mr. VALENCIA RODRIGUEZ, welcoming the fact that Australia had laws that gave effect to the Convention, such as the Racial Discrimination Act 1975 and the Racial Hatred Act 1995, an Aboriginal and Torres Strait Islander Commission, a Race Discrimination Commissioner and an official reconciliation procedure, asked what practical results had been obtained or were expected.

4. As indicated in the report, however, great discrepancies existed between indigenous and non-indigenous Australians with regard to school attendance (para. 60), health and life expectancy (para. 62), housing (para. 64), unemployment (para. 73) and the incarceration rate (para. 60). The Australian Government should take stronger measures to improve that situation.

5. With regard to indigenous children who had been removed from their families (para. 102 et seq.), the Human Rights and Equal Opportunity Commission had found, in the inquiry report on the issue, that legislative regimes had been racially discriminatory. The Commission had made 54 recommendations concerning the responsibilities of the Commonwealth, states and territory governments. In one of those, it had requested all Australian parliaments to apologize for the forcible removal of indigenous children in the past. Yet not only had the Government not felt obliged to apologize formally, but it had argued that those forcible removal policies could not be compared to genocide since they had been adopted for the protection of the indigenous population, implying that the latter could only be protected if their families were split up. He urged the Government to reconsider its position and to apologize officially for past errors.

6. With regard to the issue of land rights, the Committee as well as indigenous associations had disagreed for a number of years with the Government regarding the Aboriginal Land Rights Act 1976 and its amendments. Noting that positions in that respect remained as far apart as ever, he thought the best course would be to call a truce so as to allow the parties to negotiate a settlement. He asked the Government to keep the Committee constantly informed as to progress made in the discussions. The Committee would naturally be ready to assist the State party in its efforts to settle the matter amicably, provided that all parties involved agreed. Such an approach, which fell within the scope of early warning and urgent action procedures, would moreover help bolster the Australian Government's confidence in the Committee.

7. In the area of education and employment, he welcomed the assistance programmes that had been set up, including the Strategic Initiatives Programme. Unfortunately the results were still inadequate. Indigenous Australians were, in fact, still under-represented in higher education and were disadvantaged when it came to vocational training. Moreover, the unemployment rate in that sector of the population was 23 per cent, compared to 8.12 per cent among the non-indigenous population (para. 351). The Government was therefore requested to intensify its efforts in that regard and to keep the Committee informed of the results.

8. He welcomed the fact that the Government planned to introduce provisions in its criminal and civil law penalizing racial hatred and vilification. A bill containing those provisions had been rejected by the Senate, however, on the grounds that they jeopardized freedom of speech. Victims of racial discrimination could of course invoke the Racial Hatred Act 1995, but that Act treated such behaviour as a civil matter, whereas article 4 of the Convention required that it be made a criminal offence. It was to be welcomed, nonetheless, that the law had managed to strike a balance between the right to freedom of expression and the rights of all persons to live free from racial discrimination (para. 410). It was also positive to note that following the promulgation of the Act, the Race Discrimination Commissioner had launched an information campaign to reassure those who feared that the racial hatred legislation would seriously hinder freedom of speech. There had been a previous law, the Crimes Act 1914, which had made the incitement to commit offences an offence punishable under federal or territory law, but its scope had been limited and it did not specifically sanction incitement to racial hatred. For all those reasons, it was recommended that the Australian Government reconsider its position in order to comply with its obligations under article 4 and to remove its reservation regarding that article.

9. Mr. BANTON pointed out, in reply to Mr. Ruddock's comments at the previous meeting, that it was wrong to believe that the Committee had a list of "rogue" States parties that were required to account for their actions. If the Committee wished, for example, to receive and consider the report prepared for the coming month by the committee instructed by Parliament to examine the extent of Australia's compliance with international treaty obligations, it was entitled to do so under article 9.1 of the Convention, which stipulated that the Committee could request further information from States parties. There could be various reasons for such a request and it should not therefore be interpreted as implied criticism.

10. He would also like up-to-date information on the follow-up to the recommendations of the Commission responsible for inquiring into the 1981 incidents in Toomelah and Goonawindi, as he had already requested in 1994 (CERD/C/SR.1058, para. 36). Experts had received and were continuing to receive an enormous amount of information concerning the alarming state of health of the indigenous population. In that regard, although the report mentioned that an increasing number of measures were being taken to deal with the problem, that was perhaps not enough. Those considerations raised a number of questions. Did the Australian delegation agree that a large part of the indigenous population was demoralized and did not feel as Australian as other population groups? Did the majority of people in those other groups not believe that the indigenous population did not really belong to "their" Australia? Could it not be concluded that that feeling of demoralization could only be overcome if the indigenous population was granted the right to self-management? In other words, did the health problem of the Aboriginal population not entail a political dimension?

11. He would also like more information on the implementation of the recommendations made by the National Inquiry on Racist Violence concerning the administration in charge of public housing. He was particularly interested in the case of Joan Martin v. Homeswest, about which he had read an alarming article. He wanted to know whether it was true that indigenous Australians living in cities in housing rented from private owners or public bodies were concentrated into certain neighbourhoods, which would affect their access to schools and to other services as well as their contacts with non-indigenous people. If that were the case, should the Government, pursuant to its treaty obligations, not counter that tendency by monitoring those sectors of the housing market?

12. He asked whether the Government was planning to embody the prohibition of racial discrimination in the Constitution, whether it planned to give effect to the Convention on the Prevention and Punishment of the Crime of Genocide, to which Australia was a party, and whether it shared his view that it was responsible, under article 27 of the Vienna Convention on the Law of Treaties, for the enforcement of mandatory sentencing that was taking place in the Northern Territory, which represented a violation of article 2.1 (a) to (d) of the Convention.

13. He considered the report was too long and suggested that the Committee should decide, in cases like Australia, to ask for only a few critical questions to be addressed in order to ensure that reports did not exceed 50 pages.

14. The CHAIRMAN said that the Committee would discuss the issue under the relevant agenda item.

15. Mr. NOBEL said that Australia's report was long because that State party had not submitted a report for more than 10 years and therefore had a great deal of information to impart. He hoped that the State party would submit its reports more regularly in the future.

16. Like his colleagues, he was surprised that, despite the enormous efforts made and the many institutions set up by the Government, so little progress had been achieved, as shown by the statistics in the report. He shared Mr. Diaconu's view that that was due to the attribution of responsibilities under the federal system. The enforcement of international conventions fell to the Government and could not be delegated to territorial authorities. The role of the Government was to govern the country, which meant that it had a duty to explain to local authorities what human rights were and what they were for, namely to prevent the horrors committed in the past from ever happening again.

17. Regarding the restriction of the right to negotiate land rights, the explanation provided was that processing claims required an enormous amount of work. That argument could not be considered a justification for a denial of justice, especially in cases where an ethnic minority was affected. There were other ways of easing the workload, especially by processing claims collectively.

18. The Government should take account of the need to apply article 3 of the Convention, since, although the apartheid regime had disappeared in South Africa, segregation could appear

in any State, precisely in the sort of urban areas Mr. Banton had been referring to. The confinement of indigenous people to certain neighbourhoods undoubtedly explained why they were at such a disadvantage compared with the rest of the population in every respect.

19. Turning to the question of the reservation with regard to article 4 (a) based on the desire to preserve freedom of speech, he pointed out that the law in most countries considered the abuse of freedom of expression, like slander and libel, a criminal offence. There was therefore no reason not to apply criminal sanctions against racial vilification and incitement to commit acts of violence against persons of a certain race or ethnic group. He urged the Government in that case to lift its reservation.

20. The head of the Australian delegation had apparently stated recently that the scope of the Convention concerning refugee status should be restricted. He believed on the contrary that its scope should be extended since it did not encompass most categories of refugees.

21. According to the Amnesty International Annual Report 1999, the Australian Human Rights and Equal Opportunity Commission had published a report in which it considered the Australian practice of extended detention of undocumented refugees to be a contravention of international human rights standards. The Government had rejected that conclusion but had still not furnished any formal reply to the report. It had also been said that the Australian Government had tried to stop Amnesty International from publicly mentioning the name of the Somalian asylum-seeker Sadiq Shek Elmi, who risked torture in his country. Was that true?

22. Mr. LECHUGA-HEVIA said that in his view the Australian report was positive on two counts: it not only provided copious information on legislative and judicial measures taken to combat racial discrimination, but it also did nothing to hide the problems facing the indigenous population in all respects. The figures were telling regarding their health, life expectancy, housing conditions and job situation. In no area were indigenous people on an equal footing with their non-indigenous counterparts. It was true that programmes had been launched for their benefit, especially in the area of housing, but it was by no means sure that the funds allocated to those programmes were sufficient to meet the needs. According to the association Aboriginal Heritage, the budget of the Human Rights and Equal Opportunity Commission had, for instance, been reduced by 40 per cent. The indigenous people themselves had great difficulty obtaining loans from banks and building societies, because the latter feared they would not be able to pay the loans back. The land rights issue had still not been resolved.

23. A particular concern was the inequality that prevailed in the criminal justice system. There was an over-representation of indigenous people in custody (70 per cent in the Northern Territory). Once in prison, they were again disadvantaged compared with other prisoners, as there were not enough interpreters to assist them during police questioning or in court. Worse still, they were sometimes subjected to ill-treatment, as in the case of the indigenous child of 15 who had died while in custody for stealing a pencil. The efforts made to promote the integration of indigenous populations, notably through family reunion, were certainly commendable, but there was a suspicion that their rights might in the end have actually been reduced owing to the loss of certain advantages.

24. Mr. de GOUTTES welcomed the thoroughness of Australia's report. Never had the Committee received so much information and so many documents on the situation in that country. As Ms. McDougall, Special Rapporteur for Australia, had made an in-depth analysis of the report, he would confine himself to just a few additional comments.

25. The assistance facilities available to Aboriginal and Islander communities described in the report were impressive and definitely a very positive point.

26. The legislation on racial discrimination was also abundant and as a magistrate he had noted with great interest the legal measures introduced in favour of the indigenous population. The provisions described in paragraphs 426 and 430 of the report concerning the rights of Aboriginal persons and Torres Strait Islanders under arrest and during police questioning (such as the right to have a friend or counsel present or to have access to the services of an interpreter) were most encouraging.

27. Lastly, the report acknowledged frankly that the figures on the socio-economic integration of indigenous people were not satisfactory. There were still excessive disparities in relation to the rest of the population regarding life expectancy, health, jobs and housing.

28. On the negative side, two points appeared to be particularly important: the first was the over-representation of indigenous people in the prison population (18 per cent as opposed to 2.1 per cent for the remainder of the population). In that regard, he would like to know whether the strategic programmes mentioned in paragraph 83 of the report aimed at addressing the problem had been agreed between the state and territory governments and the indigenous groups.

29. Another source of concern was the removal of indigenous children from their families. How far had the States and Territories gone in considering the recommendations made by the Human Rights and Equal Opportunity Commission in that respect?

30. In closing, he wanted to ask a few questions regarding the comments of the Government of Australia on decision 2 (54) adopted by the Committee following consideration of the special report of Australia. Those comments, given in annex VIII to report A/54/18 submitted by the Committee to the General Assembly, referred in particular to amendments to the Native Title Act. He wished to know whether an action of unconstitutionality had been filed regarding those amendments and what had been done concerning the "formal statement of reconciliation by 2001" mentioned towards the end of the comments.

31. Could the Australian delegation indicate as well what had been done to follow up the Committee's recommendations on improving the human rights training given to law enforcement officials?

32. Mr. PILLAI wondered if the expression "Multicultural Australia", often used both in the presentation of the report and in Committee members' comments, truly reflected the multiracial nature of the country. Australia should give more emphasis to that aspect in its next report. For instance, information was given on the nationality of immigrants but not on their ethnic origin. In that connection, he had noted with interest in paragraph 130 of the report that the Equal

Opportunity Tribunal had ruled that "being Jewish was a racial identity" and that it was "the first time the Tribunal had made a ruling on the issue of ethno-religion". He wished to know whether that decision had had an impact only in New South Wales or in other States as well.

33. He had also been struck by the fact that, although the report provided a great deal of information on what government authorities were doing to prevent racial discrimination, little was said of the role of non-governmental agencies or civil society in that regard. Such information was crucial, however, for, as Ms. Zou had pointed out at the preceding meeting, xenophobia was on the rise throughout the world. Although freedom of speech was one of the basic tenets of democracy, it should not be exploited to promote racist ideas. Strong state action was warranted if that occurred. In the same vein, Australia should reconsider its reservation concerning article 4 (a) of the Convention.

34. The information published in the report on indigenous programmes was encouraging, but he would like to have further details on the funding of institutions that provided assistance to indigenous populations, as well as precise figures on the situation regarding employment.

35. Many Committee members had brought up the problem of indigenous land rights. He merely wished to point out that land was not only a means of livelihood for indigenous people but also their main asset. He would like to know what criteria determined the extent or quality of land held by them.

36. Ms. McDougall had commented extensively on the situation of the indigenous population in the criminal justice system, noting that the rate of deaths in custody was much higher for them than for the general population and that juvenile delinquency posed a real problem. Owing to their lack of information and their poor command of English, indigenous people were particularly disadvantaged. Many of them did not even know why they were in prison. Mandatory sentencing procedures, which were applied much more often to them than to Whites for similar offences, should be reconsidered.

37. Mr. BRYDE, while sharing the same concerns and queries as his colleagues, in an effort to be succinct would confine himself to asking just a few questions concerning the constitutional situation in Australia. State and territory governments tended to come in for much more criticism than the Federal Government. Moreover, many programmes described in the report, for example in the area of education, did not really fall under the remit of the Commonwealth. Were there any constitutional mechanisms to ensure that States and Territories complied with the international obligations contracted by the State party? In that respect, the question raised by Mr. Banton appeared most relevant: he had asked whether the prohibition of racial discrimination could be enshrined in the Federal Constitution, which would make it automatically applicable throughout the country.

38. Another question to which his attention had been drawn was the one raised by the Special Rapporteur on why indigenous people were represented only by a "lobby" and not in the Government itself. It was perhaps due to the fact that they accounted for only 2 per cent of the total population of Australia. In the Northern Territory, however, they made up over 25 per cent and he wondered whether their representation in that part of the country was proportional to their

numbers. Another question was whether there were institutional provisions in the Northern Territory, which was still after all under the constitutional authority of the Commonwealth, that would ensure greater representation or better power-sharing for the indigenous population.

39. Mr. RECHETOV welcomed the successful continuation of the Committee's dialogue with Australia, as reflected in the country's large, high-level delegation. It was nonetheless regrettable that, unlike on the previous occasion, the delegation did not comprise a single indigenous person. As for the report, it was a pity that the part dealing with native land title did not refer to the ten-point general plan providing for the gradual extinguishment of indigenous negotiating rights that was extensively discussed in an article on Australia in the Heidelberg Journal of International Law. That information might have shed a useful light on the report.

40. Ms. JANUARY-BARDILL would confine herself to making three brief remarks. Firstly, South Africans were not included in the statistics on the composition of the population, although she was well placed to know that there were many in Australia. Secondly, the measures aimed at combating social inequalities described in the report were undoubtedly encouraging, but results were clearly insufficient. The measures adopted for the judicial system kept inequalities in check but did not eliminate them. What methods did the Government use to assess the effectiveness of its action? Legislation was a useful tool and created a propitious environment, but only if institutions enforced the law to combat inequality in practice.

41. Her last remark concerned native land title. In order to reduce indigenous negotiating power in that regard, the Government maintained that all citizens should be placed on an equal footing. That argument appeared, in her view, to be a specious one in the case of a population that was notoriously disadvantaged. Unfortunately, as long as indigenous people did not enjoy direct representation in politics, there was little likelihood that things would change.

42. Mr. SHAHI endorsed the view of other Committee members that the mandatory sentencing procedures imposed by the Australian criminal justice system ran counter to general rules of law and were tantamount to denying the independence of the judiciary. The information given in the report on how the criminal justice system functioned showed that it was in fact extremely discriminatory against the indigenous population. For instance, because there were not enough interpretation services, indigenous people were often unable to file appeals to which they were normally entitled, particularly in the Northern Territory where many dialects were spoken. The Government should provide the necessary funds to improve the situation. Australia seemed to have clearly understood the problems linked to multiculturalism and was apparently making the desired efforts to adapt to that reality. But the indigenous population was different from other communities: it was so disadvantaged that "affirmative action" in its favour was justified.

43. Concerning the rights of indigenous peoples, he referred the delegation to the Committee's General Recommendation XXIII (fifty-first session, 1997), calling in particular on States parties to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent". It was important to empower the indigenous peoples as had been done for other immigrant communities in Australia. He also recalled the

terms of paragraph 5 in that same recommendation, calling on States parties "to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories". In that regard the implementation of an indigenous land return programme should be speeded up. Moreover, the quality of the lands allocated to indigenous peoples should be considered as well as their size.

44. Mr. YUTZIS, recalling that it was the duty of the States parties to the Convention to protect the most vulnerable populations living in their territory, wondered why, after so many years, the indigenous peoples continued to live in such poor conditions compared with the majority of other Australians. Moreover, it was regrettable that there was no representative of indigenous communities in the delegation. When Australia's last report had been considered, the Committee had welcomed the presence of the Aboriginal and Torres Strait Islander Social Justice Commissioner, on the one hand because his presence was symbolic since he was himself a member of the indigenous community, and on the other hand because as the state representative for Aboriginal Affairs he was a very useful source of information on the subject.

45. He would appreciate more information on the reorganization of the Human Rights and Equal Opportunity Commission. Might the commission's independence not be affected? The cut in the commission's budget (by 40 per cent) could only hamper the development of affirmative actions on behalf of disadvantaged groups. Could the delegation justify such a cut? It was very important that the commission should be headed by someone who shared the indigenous experience.

46. Lastly, he noted that some people had expressed concern about the merger of the Social Justice Commission and the Racial Discrimination Commission into one body.

47. Mr. ABOUL-NASR said that it was not a good idea to have changed the name of the day devoted to eliminating all forms of racial discrimination to "Harmony Day", which was less expressive and lost sight of the basic objective, namely eliminating racial discrimination. Moreover, statistics had to be interpreted with caution. It was not enough to say that indigenous people owned a certain percentage of the territory; their situation had to be compared to that of other Australians, for example in the area of education or health. The head of delegation's acknowledgement of past errors was a positive step. It was to be hoped that the momentum would not stop there and that the Government would be making an apology in that respect before long.

48. Mr. RUDDOCK (Australia) said that the issues raised had to be placed in context. Australia had come to acknowledge that certain past events had tarnished its history. On 26 August 1999, Parliament had adopted a decision in which it had reaffirmed its deep attachment to the cause of reconciliation between indigenous and non-indigenous Australians and had recognized the errors of the past regarding the way the indigenous population had been treated. On that occasion the Prime Minister had conveyed his profound and sincere regret for the injustices that indigenous people continued to consider a traumatic experience. That said, the

victims themselves often felt that merely apologizing and acknowledging past errors was not enough. Australia was aware of that fact and was pursuing its efforts to make up for the errors of the past.

49. It should be understood that the dispersion of the indigenous population across the country had been their own choice. They preferred to live in keeping with their traditional culture and therefore not to intermingle with the rest of the Australian population. It was because the Government had wanted to address the aspirations of those populations, who wished to live in their own way and exercise self-determination, that land return had been possible for certain populations. Those lands were indeed scattered, diverse, remote, and in some cases barren. It was clearly difficult to set up all the infrastructures needed in those places from one day to the next. Furthermore, the task was undeniably very costly and very lengthy. The problem of infant mortality was particularly difficult to resolve in the case of populations who wanted to live according to their own traditions.

50. The indigenous population had risen by 33 per cent between the 1990 and 1996 censuses. That rise was largely due to the fact that an increasing number of indigenous persons tended to identify themselves as such. In fact, according to Australian practice, in order to be registered as a member of the indigenous community a person had either to have indigenous ancestors or to identify with that community. The indigenous peoples were increasingly proud of their origins and that would undoubtedly have an impact on future demographic statistics.

51. With regard to political parties with xenophobic attitudes, the population had in a referendum disavowed the principle of banning political parties because of their ideology, preferring to leave the verdict to the ballot box. When some politicians had expressed racist views after their election, they had generally been rejected by voters at the next election.

52. The Committee had clearly recalled the principle that States parties to the Convention had to accept and comply with their obligations under that instrument. However, all countries did not function in the same way and could use different methods of implementing the provisions of the Convention. That did not mean they were not meeting their obligations. That was certainly true of the Commonwealth of Australia.

53. Australia could not be compared in that respect to Canada or Germany, in the sense that Queensland, Victoria and Western Australia, for example, were all different States that had been occupied by the United Kingdom. When decolonization had taken place, those States had decided to form one nation, Australia. When that nation had decided to set up a federation, the individual States had had to relinquish some of their powers, albeit very few, to the Commonwealth. Issues relating to education and justice, for example, were mainly the responsibility of the States, with the Commonwealth exercising its jurisdiction only over a few specific points. Those who suggested that the Constitution needed changing should understand that that was no so easy task. Amendments had been proposed and rejected. In fact it was perhaps more important to have the support of the population regarding certain basic values than to introduce rules that no one would follow. Similarly, in regard to both institutions and civil society, Australia was very attached to the principles of human rights. Australian culture was different but it formed the foundation of a society that functioned smoothly, and the delegation was ready to defend its point of view on the matter, firmly believing that the Government's action to combat racial discrimination was praiseworthy.

54. With regard to the Crime (Serious and Repeat Offenders) Sentencing Act 1992 that provided for mandatory imprisonment (CERD/C/223/Add.1, para. 149), he pointed out that the law had been enacted by the State of Western Australia for the purpose of preventing the frequent occurrence of thefts and robberies. In his view, however, the severity of that provision was surely mitigated by the obligation of the courts to establish the guilt of the accused beyond any reasonable doubt before sentencing them. Nonetheless, the Commonwealth had been concerned that the Act had a disproportionate albeit unintended impact on the indigenous population, especially young people, and a Royal Commission was currently considering ways of reducing the over-representation of indigenous people in criminal statistics.

55. The policy of mandatory sentencing was likely to decrease rather than increase the number of indigenous people in custody. Whatever the case might be, that issue had given rise to a lively, democratic debate in Australia. The Attorney-General of the Federal Government had invited his counterparts in the Governments of Western Australia and the Northern Territory to review carefully the questions raised by the application of that principle. He believed they would be considered at the next meeting of Attorneys-General of the different States. Meanwhile, a parliamentary committee was studying the problem of interpretation services so as to improve the practical implementation of the 1992 Act and to allay concerns raised by the policy of mandatory sentencing.

56. With regard to day-to-day interpretation services, a distinction could be drawn between ordinary interpretation services and those provided in court to overcome language barriers that might prevent indigenous people who did not speak English from following court proceedings. Those people were in a minority, because English was in fact the first language of the majority of indigenous Australians. Interpretation services were thus provided in the courts according to need, the decision being left to the discretion of the judge, who could decide on a case-by-case basis whether language assistance was needed for the proper administration of justice. Moreover, all federal courts laid on interpretation services to ensure that everyone had fair access to justice, without being penalized by language difficulties.

57. Indigenous Australians enjoyed the same access to general legal aid services as other Australians, and in addition they were entitled to specially funded services. Torres Strait Islanders enjoyed the highest amount of legal aid funding.

58. In response to a question by Mr. Diaconu concerning state and territory legislation that prohibited racial discrimination, he said that the States and Territories were governed both by their own laws and by those of the Commonwealth. Those who considered themselves to be victims of an act of racial discrimination could either lodge a complaint with the courts in their own State or Territory or invoke Commonwealth law on racial discrimination.

59. With regard to the process of reconciliation, he wished to inform Mr. de Gouttes that the Australian Government planned to issue a declaration prepared by the Council for Aboriginal Reconciliation. The Australian Government attached great importance to national measures that introduced mechanisms to assess reconciliation activities and programmes. Nonetheless, while the Government was aware that an official declaration might be needed to reconcile Australians of all origins, what was most important was continuing the process that had been started to

re-establish peace and harmony among all Australians. By encouraging dialogue, it gave some people the opportunity to acknowledge past acts and to apologize for them, which was crucial in the Australian national context.

60. With regard to Mr. Shahi's suggestion to suspend application of the Native Title Act 1993, he explained that such a solution was not possible. On the one hand the Federal Government could not suspend application of a law enacted by Parliament; on the other hand such a measure, which would remain in effect until the indigenous people and the Australian Government arrived at an agreement, would create a legal vacuum and would paralyse the system of justice. The Australian authorities therefore preferred to seek solutions that would allow them to build up a solid legal framework.

61. In reply to a question by Mr. Valencia Rodriguez, he said that Australian immigration policy did not draw any distinction based on the ethnic, racial or national origin of immigrants, as shown by its refugee and humanitarian aid policy.

62. Flexible English language classes, adapted to need, were made available to new immigrants arriving in Australia who wanted them. Classes were offered in other languages as well but not in the 175 dialects spoken in the country.

63. In reply to a question by Mr. Nobel, he said he planned to discuss the issue of the unforeseen use of international instruments with the High Commissioner for Human Rights. One such case was the Convention relating to the Status of Refugees, which was increasingly invoked as a kind of immigration charter.

64. With regard to the Australian Government's attitude to Somali asylum-seekers, he explained that in order to determine whether refugees were genuine asylum-seekers the authorities used a confidential procedure, so as to avoid divulging information that would reveal the identities of the refugees, which might expose their families to reprisals in their home country.

65. Ninety-five per cent of asylum-seekers were not placed in detention centres and were left free; only people who had arrived in Australia illegally were placed there, for health reasons and to allow the authorities to check applicants' claims and identities. Detention was also necessary in the event that asylum-seekers refused to leave Australia once their application had been rejected. In any case, persons placed in detention centres were released as soon as possible after their request for asylum had been accepted, or as soon as they declared their intention to leave the country.

66. The Australian authorities believed that offering special facilities to remedy certain disadvantages ran the risk of instituting a form of separate development. They preferred to avoid such a risk.

67. Replying to a question by Ms. McDougall concerning the situation of immigrant women, he said it was a vast and complex issue that was widely debated in Australia. In indigenous communities, women enjoyed a special status and their roles were sometimes different to men's owing to cultural practices and traditions. The Australian Government strove to promote the role of all women in society, especially young women trying to make a career.

68. In conclusion, he said that the replies that the Australian delegation had not had the time to convey orally would be communicated at a later date in writing to the Committee by the Office of the High Commissioner for Human Rights.

69. The CHAIRMAN thanked the Australian delegation for their eloquent and detailed answers to the many questions asked by Committee members and for the additional information it would send the Office of the High Commissioner in writing at a later date.

70. Mr BANTON said it would be helpful if the additional information to be sent to the Committee in writing were made widely available to all interested parties, especially at the library of the United Nations Office in Geneva and the archives of the High Commissioner's Office.

71. The CHAIRMAN invited the Special Rapporteur for Australia, Ms. McDougall, to make some brief comments on the Australian delegation's responses.

72. Ms. McDOUGALL (Special Rapporteur for Australia) thanked the Australian delegation for its replies. She welcomed the delegation's confirmation that Australia was committed to honouring its obligations under the Convention.

73. She also welcomed the delegation's assurance that Australia recognized its obligation under the Convention to establish not only de jure but also de facto equality among all Australians, regardless of their racial or ethnic backgrounds. She noted in the Australian delegation's replies an interesting parallel with the political history of her own country, the United States, where conflicts of authority often arose between the federal Government and certain States, which always defended their rights vigorously, including, in the past, the right to practice slavery. Unfortunately, they had only given up that right after a bloody civil war.

74. The federal Government of the United States held certain powers particularly in the areas of women's rights and race relations, and could annul laws enacted by the States. It was regrettable that the Australian Federal Government did not have the same powers.

75. Concerning native land rights, the delegation had said that the Native Title Act 1993, despite added amendments, maintained provisions that were unfavourable to indigenous people, on the grounds that the Australian Government had had to strike a reasonable balance between the conflicting interests of native and non-native title holders. That was not surprising, given that the amendments in question were based on common law, which in Australia had always been unfavourable to native land rights and bearing in mind that even the Mabo decision, which recognized native land rights, had not established equality between native and non-native titles. Similarly, although the Aboriginal Land Act 1991 had improved the situation, it still maintained discriminatory provisions with regard to native land rights.

76. The CHAIRMAN said that the Committee would continue its consideration of the tenth, eleventh and twelfth periodic reports of Australia at its 1395th meeting.

The meeting rose at 1.05 p.m.